

IN THE SENATE OF THE UNITED STATES.

MAY 27, 1858.—Ordered to be printed.

Mr. CLAY submitted the following

REPORT.

The Committee on Commerce, to whom was referred the "memorial of William A. Vaughan, John Smith, Wm. D. Little, and Nathaniel Dennet, jr., praying that compensation may be made to them for time that they were employed as inspectors at the port of Portsmouth, N. H.," have had the same under consideration, and report against the prayer of the memorialists for the reasons set forth in the letter of the Secretary of the Treasury, dated May 24, 1858, which they present as part of their report.

TREASURY DEPARTMENT,  
May 24, 1858.

SIR: I have the honor in reply to your communication asking information, and the opinion of the department, respecting the claim of William A. Vaughan, John Smith, William D. Little, and Nathaniel Dennett, for arrearages of pay claimed by them as inspectors of the customs at Portsmouth, New Hampshire, and in reply to state that the second section of the compensation act of March 2, 1799, provides that to each inspector there shall be allowed, for every day he shall be actually employed in aid of the revenue, a sum not exceeding two dollars, and that the act of the 26th of April, 1816, provides for an addition of fifty per cent. upon the sums allowed as compensation to inspectors.

Under these provisions of law this department has regulated the compensation of inspectors. In some cases it has fixed the rate below the maximum thus prescribed, according to the nature and magnitude of the business at the port. In all large ports, where the business requires the corps of inspectors to be constantly employed, or ready for employment, the department has allowed the maximum prescribed by law.

In ports where the revenue business is slight or occasional, rates of compensation less than the maximum have been allowed for each day's actual service. At some of the small ports the inspectors have been usually regarded as having been actually employed within the

meaning of the law, so as to entitle them to their per diem compensation only when they were in the actual discharge of some of the duties of their office, such as superintending the unloading of cargoes or keeping charge of importing vessels. In other ports inspectors have been regarded as entitled to pay for each day's actual service, or where waiting orders, having duly reported themselves ready for duty.

The petitioners in this case, it appears, were appointed inspectors of the customs at the port of Portsmouth, New Hampshire, in the year 1849, at a compensation of three dollars per day. They also performed the duties of measurers, for which they received the fees allowed by law for that service. It had been the practice at that port, before these petitioners were appointed, to allow pay to inspectors for those days only in which they were in the actual discharge of official duty. This practice, it is presumed, was, of course, known to the petitioners when they accepted their appointments. They were so paid and duly receipted for their compensation, and no objection is believed to have been made to this department by them, or on their behalf, until the month of December, 1852, and January, 1853, when, in a letter to the then collector, dated the 31st of December, 1852, they refused to receipt their accounts as formerly, and enclosed their bills for the fourth quarter of 1852, made out in conformity with the principle contended for by them. Their letter and bills were transmitted to the department by the collector in the letters of December, 1852, and January, 1853, before referred to. A reply thereto was made by the Commissioner of Customs, to whom the papers were referred, dated the 8th of February, 1853, which was construed by said collector as sanctioning the principle contended for by the inspectors, and he accordingly paid them the amount of their bills for the fourth quarter of 1852, and on the same principle to the close of their official term in June, 1853. The principle for which they contended, and in conformity with which their bills for the fourth quarter of 1852 were made out, was, that they were entitled to be paid for the days on which they reported themselves ready for duty as well as for the days on which they were actually employed. The department, as well as the collector, appears to have assented to this change from the former practice of the port, and inspectors, including the petitioners, for the remainder of their service, have been ever since so paid.

It is proper here to state that the Commissioner of Customs, in his last report on the subject of this claim, a copy of which is herewith enclosed, states, upon further evidence presented, that the petitioners, previous to the fourth quarter of 1852, did object to the collector to their compensation as paid by him for only the time they were actually employed; that in the year 1849 they were directed by the surveyor of the port to be always on the lookout to relieve the boarding officers on the arrival of foreign vessels at the wharves; that they were considered on duty daily; and that it was understood that while they were not attached to any particular vessel they were on the lookout on the wharves and elsewhere in aid of the revenue.

Some time after the petitioners left office, they presented a claim to this department, for the first time, to be allowed payment for the

time while they held themselves ready to perform official duty, from the dates of their respective appointments, in 1849, in addition to the payments previously made for the services actually performed, in accordance with the practice then, and for a long time before, existing at Portsmouth and several other ports. They did not then set forth that they had objected at the time to such payment, nor does it appear by the report of the Commissioner of Customs, before referred to, that such objection was anything more than casual talk in conversation with the collector, not reported nor intended to be reported by him as an additional claim for their services. Their additional claim was simply based on the ground, that the payment supposed to be authorized by the Commissioner of Customs on the 8th February, 1853, extended back to 1849.

But finding that the letter contained no authority for such payment of claims antecedent to those then presented, the department held that the compensation paid and accepted at the time was conclusive against further allowance based upon another rule not then in existence, and not in accordance with the previous practice at that port. This claim for additional compensation was rejected.

It will be obvious to the committee that, should such a claim be allowed, the inspectors of the revenue at Portsmouth and other ports, who, during a long series of years, were allowed only for the time actually employed, will be equally entitled to have their accounts readjusted, and additional allowances made for such periods as they prove themselves to have been ready and willing to perform duty had they been required. The principle involved in this petition is, therefore, quite important.

The papers which accompanied your letter are herewith returned.

Very respectfully, your obedient servant,

HOWELL COBB,  
*Secretary of the Treasury.*

Hon. C. C. CLAY,  
*Chairman Committee on Commerce, U. S. Senate.*

